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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYCC Docket No. 97-213

In the Matter of:

**Communications Assistance for
Law Enforcement Act**

**COMMENTS OF
THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

Pursuant to the Commission's recent *Public Notice*,¹ the Telecommunications Industry Association ("TIA")² respectfully submits these comments in support of the petition by the Cellular Telecommunications Industry Association³ to suspend the September 30, 2001 deadline for compliance with the Communications Assistance for Law Enforcement Act ("CALEA")⁴ for packet-mode communications.

¹ Comments Invited on CTIA Petition to Suspend CALEA Compliance Date, *Public Notice*, CC Docket No. 97-213, DA 00-2022 (rel. September 1, 2000).

² TIA is a national, full-service trade association of over 900 small and large companies that provide communications and information technology products, materials, systems, distribution services and professional services in the United States and around the world. TIA is accredited by the American National Standards Institute ("ANSI") to issue standards for the industry.

³ Cellular Telecommunications Industry Association, *Petition to Suspend Compliance Date*, CC Docket No. 97-213 (filed August 23, 2000).

⁴ Pub. L. 103-414, 108 Stat. 4279 (1994), *codified at* 47 U.S.C. §§ 1001 *et seq.*

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As part of its previous review of the industry safe harbor standard (J-STD-025),⁵ the Commission evaluated J-STD-025's provisions for packet-mode communications. In its *Third Report and Order*, the Commission concluded that "the approach taken with regard to packet-mode communications in J-STD-025 raises significant technical and privacy concerns."⁶ However, the Commission also observed that "[w]e do not believe that the record sufficiently addresses packet technologies and the problems that they may present for CALEA purposes."⁷ As a result, the Commission requested that TIA further study this packet-mode issue and submit a report to the Commission by September 30, 2000.⁸ At the same time, however, the Commission held that, "in the interim," CALEA solutions consistent with J-STD-025 should be provided by September 30, 2001.⁹

As mentioned in TIA's previous status reports to the Commission,¹⁰ in order to expand the technical expertise contributing to the packet data study, TIA has invited a broad variety of packet-oriented technical groups and companies to participate in a series of Joint Experts Meetings ("JEM"). The JEM held two, three-day sessions: May 3-5, 2000 in Los Vegas, Nevada

⁵ Telecommunications Industry Association & Alliance for Telecommunications Industry Solutions, Interim Standard, *Lawfully Authorized Electronic Surveillance*, J-STD-025 (December 1997).

⁶ In the Matter of Communications Assistance for Law Enforcement Act, *Third Report and Order*, CC Docket No. 97-213, FCC 99-230, ¶ 55 (rel. August 31, 1999) ("Third Report & Order").

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Telecommunications Industry Association, *Status Report*, CC Docket No. 97-213 (filed on December 23, 1999); Telecommunications Industry Association, *Second Status Report*, CC Docket No. 97-213 (filed on May 17, 1999).

and June 27-29 in Washington, D.C.¹¹ Based on the information received during these sessions, the JEM has prepared a draft report, which TIA intends to finalize and forward to the Commission by the end of September.

Although the report is not yet complete, TIA believes that the Commission will find the report a useful document. However, the technical issues addressed by the report are likely to raise as many questions as they answer. For example, the report will demonstrate that packet data technologies are enormously different; what information may be available in one technology will not be available in another. Even the same technology may vary from carrier to carrier, depending on how different carriers implement and operate that technology. Given the additional technical information that will be made available in this report, the Commission may want to open a new proceeding and solicit public comments on the report.

In the mean time, however, manufacturers and carriers are unsure whether to continue expending considerable resources, developing complicated and expensive solutions for packet-mode communications consistent with the J-STD-025, if it is possible that those solutions may prove to be only an “interim” or “temporary remedy.”¹² Obviously, manufacturers and carriers cannot presume to know how the Commission may respond to TIA’s report. It is quite possible that, after reviewing the report, the Commission may determine that J-STD-025’s solution is the only “reasonably achievable” method for providing law enforcement access to packet-mode communications. However, if the Commission, after reviewing TIA’s report, were to establish a

¹¹ Additional information about the JEM’s sessions is available at TIA’s website: http://www.tiaonline.org/standards/calea_jem/. TIA was pleased that representatives from the Commission were able to participate in both JEM sessions.

¹² Third Report & Order, ¶ 56 (“We emphasize, however, that we intend this solution [J-STD-025] to be only an interim one.”).

new set of requirements for packet-mode technologies (or to encourage industries to develop requirements for their own, unique technologies), manufacturers and carriers would prefer to build only one solution (consistent with those requirements) – rather than build a solution consistent with J-STD-025 and have it superseded in the relatively near future by a new set of requirements.¹³

Adding to this uncertainty, both the decision by the United States Court of Appeals for the District of Columbia Circuit¹⁴ and recent hearings in Congress¹⁵ have raised questions about the legal requirements law enforcement must satisfy in order to monitor packet-mode communications. Again, manufacturers and carriers would prefer to avoid developing a highly expensive and complicated solution until these questions have been answered. For example, if it were determined that law enforcement could only obtain a Title III order for packet-mode communications (i.e., providing access to the content of a subject's communications), then manufacturers and carriers would no longer have to investigate potential solutions for extracting information from that packet stream (which are complex and network-intensive). In this regard, it is worth noting that during the hearing by the House Judiciary Committee's Subcommittee on the Constitution, several members questioned the Department of Justice's rationale that it was entitled

¹³ Of course, when talking about “near future” in terms of the telecommunications industry, it is helpful to remember that the standard development cycle for manufacturers is 18 to 24 months.

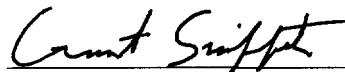
¹⁴ *United States Telecom Association, et al. v. Federal Communications Commission, et al.*, No. 99-1442, slip op. (D.C. Cir. August 15, 2000).

¹⁵ *See, e.g.*, Hearings before the House Committee on the Judiciary, Subcommittee on the Constitution (September 6, 2000) (discussing potential legislation to restrict law enforcement's ability to monitor packet-data technologies).

to the equivalent of a pen register or trap and trace order (i.e., no content) on packet-mode technologies.¹⁶

For all of these reasons, TIA strongly supports CTIA's proposal to suspend the September 30, 2001 compliance date for packet-mode communications pending the completion of any proceedings the Commission may initiate after receiving and evaluating TIA's packet data report.

Respectfully submitted,



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¹⁶ See, e.g., *Tougher Surveillance Rules Find Bipartisan Support*, Communications Daily (September 7, 2000).